

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

P. Kay Metal, Inc.  
2448 East 25th Street  
Los Angeles, CA 90058

EPA ID No. CAL 000024110

Respondent.

Docket HWCA 00101-3017A

SETTLEMENT AGREEMENT

Health and Safety Code  
Section 25187

agree as follows:

1.1. Site. Respondent generates, handles, treats, and stores hazardous waste at the following site: 2448 East 25th Street, Los Angeles, California (Site).

1.2. Inspection. The Department inspected the Site on November 20, 21, and 28, 2000 (First Inspection); January 30 and February 4, 2002 (Second Inspection); and June 16 and 17, 2003 (Third Inspection).

1.3. Permit/Interim Status. The Department authorized Respondent to manage hazardous waste by Standardized Hazardous Waste Facility Permit ("HWFP"), Series B, issued on December 19, 1997. Respondent is also a Registered Hazardous Waste Transporter, ID No. 2673 renewal issued on March 31, 2002, with an expiration date of March 31, 2003.

1.4. Jurisdiction. Health and Safety Code, section 25187, authorizes the Department to order action necessary to correct violations and assess a penalty when the Department determines that any person has violated specified provisions of the Health and Safety Code or any permit, rule, regulation, standard, or requirement issued or adopted pursuant thereto.

1.5. Dispute. A dispute exists regarding the violations alleged below. The parties wish to avoid the expense of litigation and to ensure prompt compliance with the statutes and/or regulations cited herein. Respondent does not admit liability by entering into this Agreement.

1.6. Full Settlement. This Agreement shall constitute full settlement of the violations alleged below and in the Amended Enforcement Order dated October 16, 2002. This Agreement also constitutes a full settlement of the violations observed during the Third Inspection which are listed in the Summary of Violations dated June 17, 2003, and attached to this Agreement as Attachment A. Nothing in this Agreement limits the Department from taking appropriate enforcement action concerning other violations.

#### VIOLATIONS ALLEGED

2. The Department alleges the following violations:

2.1. Respondent violated Health & Safety Code sections 25202, subdivision (a), and 25160, subdivision (e)(3); California Code of Regulations, title 22, section 66270.30, subdivision (a); and Standardized HWFP, Series B, Part II - Special Conditions, #1, in that, Respondent accepted hazardous wastes that were not

accompanied by properly completed manifests, and Respondent stored hazardous wastes not authorized under its permit.

2.2. Respondent violated Health & Safety Code section 25202, subdivision (a); California Code of Regulations, title 22, section 66270.30, subdivision (a); and Standardized HWFP, Series B, Part II - Special Conditions, #1, in that Respondent accepted, treated and handled RCRA wastes, including ignitables and corrosives, without a permit or grant of authorization from the Department.

2.3. Respondent violated Health & Safety Code section 25202, subdivision (a); California Code of Regulations, title 22, section 66270.30, subdivision (a); and Standardized HWFP, Series B, Part II-Special Conditions, #6 and #8, in that on or about November 20, 2000, Respondent exceeded its storage capacity limit in two different locations. Respondent stored a total of 82 containers or 4,510 gallons in HWS-1. The storage capacity limit of HWS-1 is 4,410 gallons. Respondent exceeded the capacity limit of HWS-1 by 100 gallons. In HWS-2, Respondent stored a total of 58 containers or 2,440 gallons. The storage capacity limit of HWS-2 is 1,325 gallons. Respondent exceeded the capacity limit of HWS-2 by 1,115 gallons.

2.4. Respondent violated Health & Safety Code section 25202, subdivision (a); California Code of Regulations, title 22, section 66270.30; and Standardized HWFP, Series B, Part II - Special Conditions, #1, in that on or about November 20, 2000. Respondent stored hazardous waste liquids in HWS-1 storage area without a permit or grant of authorization from the Department. Respondent is only authorized to store hazardous waste solids (solder dross and contaminated debris) in HWS-1. Respondent

does not have authorization to store hazardous waste liquids, including ignitable liquid wastes.

2.5. Respondent violated Health & Safety Code section 25202, subdivision (a), and California Code of Regulations, title 22, section 66264.177, subdivision (c), in that on or about November 20, 2000, Respondent stored incompatible wastes without separation by means of a dike, berm or other device. There were three containers of Hydrobromic acid stored next to two containers of strong base (Dimethylamine) without a separation by means of a berm, wall or other device.

2.6. Respondent violated Health & Safety Code section 25202, subdivision (a); California Code of Regulations, title 22, section 66264.35; and Standardized HWFP, Series B, Part II - Special Conditions, #12, in that on or about January 30, 2002, Respondent failed to maintain adequate aisle space to allow for movement of personnel and emergency equipment. Containers of hazardous waste stored in HWS-2 and HWS-3 had less than two feet of aisle space in between rows of containers.

2.7. Respondent violated Health & Safety Code section 25202, subdivision (a); California Code of Regulations, title 22, section 66270.30, subdivision (a); and Standardized HWFP, Series B, Part II - Special Conditions, #4, in that Respondent stored hazardous waste at its facility in excess of one year. Five drums were stored at the facility from January 28, 2000 to at least January 30, 2002.

2.8. Respondent violated Health & Safety Code section 25202, subdivision (a); California Code of Regulations, title 22, section 66270.30, subdivision (a); and Standardized HWFP, Series B, Part II - Special Conditions, #4, in that Respondent

stored hazardous waste at its facility in excess of one year. Four 55-gallon drums, one 30-gallon drum, and 3 5-gallon containers were stored at the facility from December 13, 2002, or earlier, through June 16, 2003.

#### SCHEDULE FOR COMPLIANCE

3.1. Respondent has corrected the violations alleged in Paragraph 2.

3.2. Submittals. All submittals from Respondent pursuant to this Agreement shall be sent to:

Florence Gharibian, Branch Chief  
Statewide Compliance Division  
Southern California Branch  
Department of Toxic Substances Control  
1011 N. Grandview Avenue  
Glendale, CA 91201

3.3. Communications. All approvals and decisions of the Department made regarding submittals and notifications shall be communicated to Respondent in writing by the Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

3.4. Compliance with Applicable Laws. Respondent shall carry out this Agreement in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

3.5. Liability. Nothing in this Agreement shall constitute or be construed as a

satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Agreement. Notwithstanding compliance with the terms of this Agreement, Respondent may be required to take such further actions as are necessary to protect public health or welfare or the environment.

3.6. Site Access. Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any other agency having jurisdiction. Nothing in this Agreement is intended to limit in any way the right of entry or inspection that any agency may have by operation of any law or otherwise.

3.7. Government Liabilities. The Department shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent, or related parties specified in paragraph 4.2, in carrying out activities pursuant to this Agreement, nor shall the Department be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Agreement.

3.8. Extension Requests. If Respondent is unable to perform any activity or submit any document within the time required under this Agreement, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.9. Extension Approvals. If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

## OTHER PROVISIONS

4.1. Parties Bound. This Agreement shall apply to and be binding upon Respondent and its officers, directors, agents, employees, contractors, consultants, receivers, trustees, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

4.2. Intearation. This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

4.3. Privileaes. Nothing in this Consent Agreement shall be construed to require any party to waive any privilege, including without limitation, attorney-client and attorney work-product. However, the assertion of any privilege shall not relieve any party of its obligations under this Agreement.

## PENALTY

5.1. Respondent shall pay the Department a total penalty of \$50,000, which includes \$15,000 as reimbursement of the Department's costs and \$20,000 in the form of a Supplemental Environmental Project (SEP) described at Attachment B to the Agreement, which is incorporated herein as if fully set forth at this place.

5.2. Payment is due as follows:

May 20,2004	\$5,000
September 20,2004	\$5,000
May 20,2005	\$10,000
January 20,2006	\$10,000

In the event that any payment is not received at the address set forth below on or before the last day of the month in which it is due, the entire remaining balance shall become due and payable immediately. In the event that the SEP is not completed as set forth at Attachment B, the entire \$20,000 allocated to the SEP shall become due and payable immediately.

5.3. Respondent's checks shall be made payable to Department of Toxic Substances Control, shall identify the Respondent and Docket Number, as shown in the caption of this case, and shall be delivered together with the attached Payment Voucher to:

Department of Toxic Substances Control  
Accounting Office  
1001 I Street, 21st floor  
P. O. Box 806  
Sacramento, California 95812-0806

Photocopies of the checks shall be sent simultaneously to:

Florence Gharibian, Branch Chief  
Statewide Compliance Division  
Southern California Branch  
Department of Toxic Substances Control  
1011 N. Grandview Avenue  
Glendale, CA 91201



James J. Grace, Staff Counsel  
Office of Legal Counsel  
Department of Toxic Substances Control  
1001 I Street, 23rd floor  
P. O. Box 806  
Sacramento, California 95812-0806

5.4. If Respondent fails to make payment as provided above, or to complete the SEP, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees,

5.5. The \$30,000 payment is allocated among the violations observed in the three inspections as follows: \$25,000 for the violations observed during the First Inspection (November 2000); \$2,500 for violations observed during the Second Inspection (January-February 2002); and \$2,500 for violations observed during the Third Inspection (June 2003).

RIGHT TO A HEARING

6. Respondent waives any right to a hearing in this matter.

EFFECTIVE DATE

7. The effective date of this Agreement is the date it is signed by the Department.

Dated: 4-30-04

P. Kay Metal, Inc.

Original signed by Larry Kay

By:

**Dated:** 4-30-04

Original signed by Florence Gharibian

Department of Toxic Substances Control